

**Walker Mountain Communication Site and Forest Plan Amendment
Appeal Issues and Responses
Crescent Ranger District – Deschutes National Forest
June 2009**

Appellant

Richard Oberdorfer

Appeal Number

09-06-00-19-215

Appellant's Statement 1: Appellant asserts, "The access road component of the Proposed Action has not been disclosed to the public in either the SOPA or the request for comments;" therefore the public did not have the opportunity to comment on the proposed road. Appeal at 1.

RESPONSE: I find the public was provided adequate disclosure of the components of the proposed action for the purposes of public scoping, including the access road. I find the Responsible Official complied with Forest Service direction on scoping. Further, the Responsible Official provided clear information as to how to obtain further information on the proposal for those interested.

Forest Service regulations do not prescribe any required content for the SOPA. 36 CFR 220.4 (d).

Forest Service regulations at 36 CFR 220.4(e) describe scoping requirements. The regulations do not specify what information should be in the scoping letter. The September 9, 2008 letter from the BPA to the public requesting comment on the proposal included a site diagram that shows a proposed access road. The December 5, 2008 letter from the BPA to the public providing further opportunity to comment on the proposal also mentions that an access road is part of the proposal. The EA at pages 7 and 15 also discusses proposed road construction. The February 19, 2009 letter from John Allen sent to interested parties indicated road construction would be part of the proposed action. Appeal Record at Tab G.

The appellant was invited to a site visit at the project area on October 8, 2008 but did not attend.

Appellant's Statement 2: Appellant asserts that it is unclear which site plan applies to the management of the Walker Mountain Communications Site, and the Forest should not "rely on Site Plans that do not exist or which have been withdrawn." Appeal at 1. Appellant asserts that the site should be managed in accordance with the 1982 site plan and the 1995 plan amendment. Appeal at 3.

RESPONSE: I find that the Responsible Official clearly disclosed which site plan the area is managed under, and explained the chronology of management direction for Walker Mountain.

It is not clear which law, regulation or policy the appellant is alleging the Forest Service has violated in this part of the analysis.

The area is currently managed under the 1982 site plan, as amended by the 1995 decision. This is clearly discussed in the EA at 6 and the DN at 1. In the Decision Notice, the Responsible Official explains his rationale for amending the Forest Plan to continue implementing the 1995 decision, but in a manner responsive to current needs. DN at 3.

Appellant's Statement 3: Appellant asserts, "The Purpose and Need as stated in the EA is irrelevant and misleading." Appeal at 1. Appellant believes the Bonneville Power Administration did not disclose "why it can only continue to operate its power distribution system only with digital microwave as opposed to fiber and then only by constructing a new digital microwave facility on Walker Mountain." Appeal at 1. Appellant further asserts the unreliability of the power supply as stated in the no action alternative is an unsupported conclusion, and that other means could have been used to achieve the same result. Appeal at 3.

RESPONSE: I find the Responsible Official articulated a purpose and need that is reasonable.

The Forest Service has a duty to respond to requests for citing communications facilities. Forest Service Handbook 2709.11 Chapter 10.2. As explained in the EA at 6-7, Walker Mountain has several communications towers because it is ideally situated geographically, and is one of the few high elevation features in the area with road access and electricity at the summit.

Consideration of what is the appropriate technology for BPA's communications needs is outside the scope of this decision. It is the role of the Forest Service only to respond to BPA's request and determine if it is a reasonable and legal use of the site. The Forest Service is required under the terms of the Section 704c of the Telecommunications Act of 1996 to facilitate the development and placement of telecommunications equipment so long as this does not conflict with the agency's mission or other planned use of the property. EA at 35.

Appellant's Statement 4: Appellant asserts the project was "expanded...on the pretext of accommodating the Oregon Wireless Integrated Network and several undisclosed private and commercial entities," and that OWIN and other entities should have been required to submit applications. Appeal at 2.

RESPONSE: I find the Responsible Official clearly articulated his rationale for deciding to permit a facility that allows for expansion on Walker Mountain. By authorizing one larger building, the decision complies with the terms of the 1995 site plan decision by limiting the number of buildings and towers. DN at 1.

Appellant's Statement 5: Appellant asserts the B1 building and T1 tower may be historic properties and the project cannot proceed until it is determined whether or not the properties are historic. Appeal at 2.

RESPONSE: I find the Responsible Official's decision to remove the B1 building and the T1 tower are appropriate.

The National Historic Preservation Act of 1966, as amended, requires the Forest Service to consult with the Oregon State Historic Preservation Office prior to proceeding with projects. The Responsible Official consulted with the SHPO and received a letter of concurrence stating that the project has no effect on known cultural resources. Griffin letter dated 6/21/07 Appeal Record at Tab K.

Appellant's Statement 6: Appellant asserts, "The Walker Mountain Visibility Study prepared by BPA...does not demonstrate that the proposed tower will meet the VQO of partial retention." Appeal at 2. Appellant asserts that "Actual View" diagrams are absent; appellant further asserts the tower would be visible from Highways 58 and 97. Appeal at 2. Appellant asserts the T1 tower and B1 building were omitted from the Visibility Study, yet the DN states those buildings are more visible than the new ones will be. Appeal at 2-3.

RESPONSE: I find the EA provided sufficient information for the Responsible Official to conclude the decision will comply with Forest Plan direction to manage the area in compliance with Forest Plan visual quality objectives.

The visual quality objective for Walker Mountain is "modification." The visual quality objective for the Walker Mountain as seen from Highways 97 and 58 is "partial retention." EA at 23.

The EA describes design elements for structures on Walker Mountain that will help make these structures less visible. EA at 23. A visual analysis was conducted and the results for the selected alternative are displayed in the EA at 27-29. Based on this analysis, the Responsible Official has determined the project will comply with Forest Plan visual quality objectives. DN at 2 and 5.

Appellant's Statement 7: Appellant asserts the Forest Service should have considered consolidating facilities, and that the existing facilities could meet public demands. Appeal at 3.

RESPONSE: The EA at pages 5-7 describes how Walker Mountain is ideal as a site to locate communication towers and that the Forest Service expects demand for Walker Mountain to grow.

The Forest Service considered an alternative that would have consolidated facilities on Walker Mountain within the specifications of the current site plan. However, as described in the EA on page 10, this would not have allowed the development of a facility that would meet the requirements imposed on BPA in the North American Electric Reliability Council and Western Electricity Coordinating Council directives. EA at pages 6-7. Nor would consolidated operations under the existing site plan allow BPA to comply with the requirements of Executive Order 13228. EA at 6.



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File Code: 1570-1

Date: June 23, 2009

Route To:

Subject: Disposition of the Appeal on the Walker Mountain Communication Site & Forest Plan Amendment Decision Notice

To: Cal Joyner, Appeal Deciding Officer

This memorandum documents my recommendations regarding the disposition of the appeal on the Walker Mountain Communication Site and Forest Plan Amendment Decision Notice. I have enclosed a summary of the appellant's issues, along with a short description of my findings. The appeal review was conducted in accordance with 36 CFR 215 and Regional procedures.

I recommend affirming the decision made by the Responsible Official. I have reviewed the project documentation provided by the Deschutes National Forest and considered the appellant's appeal issues. The decision documentation is consistent with the National Environmental Policy Act, the National Forest Management Act, and the Deschutes National Forest Land and Resource Management Plan, as amended.

I believe that the project analysis adequately supports the decision and is consistent with law and policy. Specifically, the decision to permit construction of a communication tower, associated buildings and access road is necessary to attain consistency with the objectives set forth in the Deschutes National Forest Land and Resource Management Plan.

Appellant Richard Oberdorfer requested that the Responsible Official withdraw the decision and conduct additional analysis, provide additional comment opportunity, provide additional information to support the purpose and need and disclose additional information about demand for communications. Appellant Oberdorfer also requested the Responsible Official not approve any new structures that do not meet the visual quality objective of partial retention.

After reviewing the appeal record, I recommend that the requested relief be denied and the Responsible Official's decision be affirmed on all points. Enclosed with this memo are my responses to each appeal issue.

/s/ Kevin Martin
KEVIN MARTIN
Forest Supervisor

cc: Joyce Casey



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Date: June 24, 2009

Richard Oberdorfer
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**CERTIFIED MAIL – RETURN
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Dear Mr. Oberdorfer:

This constitutes my decision, pursuant to Part 215 of Title 36 of the Code of Federal Regulations (36 CFR 215), on your appeal of Forest Supervisor, John Allen's, Decision Notice and Finding of No Significant Impact for the Walker Mountain Communication Site and Forest Plan Amendment.

I have considered the appeal record for the project and the recommendations of the Appeal Reviewing Officer. The Appeal Reviewing Officer conducted his review on the appeal record and the issues in your appeal. A copy of his recommendation is enclosed.

A review of the decision documentation indicates that consideration was given to the relevant, site-specific issues raised in your appeal. I find that the decision is in compliance with law, regulation, and policy, and there is no indication that the decision should be withdrawn.

I affirm the Responsible Official's decision and deny your requested relief. This decision constitutes the final administrative determination by the U.S. Department of Agriculture and is not subject to further administrative review.

Sincerely,

/s/ Calvin N. Joyner

CALVIN N. JOYNER
Deputy Regional Forester
APPEAL DECIDING OFFICER

cc: Joyce Casey
Susan Skakel
John P Allen
Holly Jewkes



Enclosures